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## **REMARKS**

The December 16, 2002 office action (paper # 10) and the references cited therein have been carefully considered. In view of the amendments presented herewith, and based on the following remarks, Applicant submits that the instant application is in condition for allowance.

### ***Specification***

The Examiner objected to sections in the specification based on formal matters. The paragraph beginning on page 6 line 20 has been amended to now more appropriately describe Figure 9b, instead of Figure 9a. Support for this amendment is found on page 20, lines 7-8. The paragraph beginning on page 7 line 1 was amended to make reference to Figure 9a, not Figure 9b. Support for this amendment is found on page 6, line 17. The Abstract section was amended by replacement paragraph to describe method steps claimed in the application, and to remove material which the Examiner suggested was objectionable in the Abstract.

### ***Claim Objections***

The Examiner objected to claims 2-5 as being in improper dependent form. Applicant has cancelled claims 2-5.

### ***Claim Rejections***

Claims 7, 10-13, 14-18 and 26 were rejected under 35 U.S.C. § 112 as being indefinite. Claims 1-9 and 20-31 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,314,436 ("Wilk"). In addition, claims 10-19 were rejected as being obvious over Wilk in view of U.S. Patent No. 6,119,913 ("Adams et al."). To address the claim rejections, Applicant has amended claims and added a new claim, as summarized in the following Table. The Table shows the appropriate locations in the specification which support each amendment or new claim.

**Table of Amendments and New Claims**

<b><u>Claim No.</u></b>	<b><u>Type</u></b>	<b><u>Exemplary Location in Spec.</u></b>
1	Amended	p. 8 line 19 - p.10 line 14
6	Amended	p. 9 lines 2-8
7	Amended	p. 9 lines 2-8
8	Amended	p. 9 lines 2-8
9	Amended	p. 9 lines 2-8
10	Amended	p. 10 lines 6-10
11	Amended	p. 11 line 12 - p.12 line 19
14	Amended	Fig. 2
15	Amended	p.11 line 12 - p. 12 line 19
16	Amended	p. 13 lines 15-19
19	Amended	Fig. 2
20	Amended	p. 43 line 8 - p. 44 line 14
21	Amended	p. 43 lines 8-12
26	Amended	p. 9 lines 2-8
27	Amended	Fig. 2 / p. 44 lines 7-10
32	New	p. 4 lines 17-21; p. 5 lines 18-23

***Claim Rejections - 35 U.S.C. § 112***

The Examiner found that the limitation “stapler/cutter instrument” was unclear in claims 7 and 26. Applicant has amended claims 7 and 26 to recite a “stapler and cutter instrument”.

The Examiner also found that claims 10 and 14 lacked antecedent basis for the term “flexible shaft”. Applicant has amended claims 10 and 14 to effect a suitable editorial revision in claims 10-13 and 11-14. Applicant has also amended claim 9 to effect a similar editorial revision.

### ***Claim Rejections - 35 U.S.C. § 102***

The Examiner concluded that Wilk anticipates the use of a surgical device as recited in claims 1-9 and 20-31. Applicant has amended claim 1 to more clearly distinguish Applicant's invention from the device taught in Wilk. Claim 1 has been amended to appear as follows:

1. (Currently amended): A surgical device, comprising:
  - a hollow shaft having a distal end;
  - a drive shaft rotatably disposed in the hollow shaft and extending longitudinally through the hollow shaft to the distal end of the hollow shaft;
  - and
  - a first surgical instrument configured to be detachably coupled to the drive shaft and the distal end of the hollow shaft,wherein the hollow shaft is configured to be inserted into a body via a first orifice and the first surgical instrument is configured to be inserted into the body via a second orifice; and
- wherein the hollow shaft and drive shaft are configured to be coupled with the first surgical instrument after the hollow shaft is inserted into the body via the first orifice and after the first surgical instrument is inserted into the body via the second orifice.

The Wilk patent does not teach or disclose a hollow shaft with a drive shaft rotatably disposed in the hollow shaft which detachably couples with a surgical instrument. Instead, Wilk discloses the use of a two piece instrument in which one piece of an instrument is removably detachable with a second piece of the instrument. There is no teaching, however, that the instrument itself should be provided in conjunction with a hollow shaft containing a drive shaft to permit detachable coupling of the instrument shaft to the drive shaft and to the distal end of the hollow shaft. Therefore, amended claim 1 is distinguishable over Wilk. Claims 6-9 are dependent on claim 1 and incorporate all the features recited in claim 1. Therefore, claims 6-9 are distinguishable over Wilk for at least the same reasons that claim 1 is distinguishable. Applicant has amended claims 6-9 to use terminology consistent with the amended language in claim 1.

Claim 20 has been amended to read as follows:

20. (Currently amended): A method for performing a procedure on a body, comprising the steps of:
- (a) inserting a hollow shaft having a distal end into the body via a first orifice, the hollow shaft containing a drive shaft rotatably disposed therein;
  - (b) inserting a surgical instrument into the body via a second orifice, the surgical instrument including a coupling complimentary to and configured to couple with the distal end of said hollow shaft to connect the drive shaft with the surgical instrument in operable communication; and
  - (c) coupling the hollow shaft and the surgical instrument via the coupling after the inserting steps (a) and (b).

The Wilk patent does not teach the step of inserting a hollow shaft containing a rotatable drive shaft into a body via a first orifice. Moreover, Wilk does not teach the steps of inserting a surgical instrument into the body via a second orifice and coupling the hollow shaft and drive shaft to the surgical instrument after such insertions. Instead, Wilk teaches the coupling of one part of the instrument to another part of the instrument itself. In essence, Wilk teaches the use of a two piece instrument wherein the separate pieces of the instrument itself may be coupled together. Applicant's claim does not read on such an arrangement. Therefore, amended claim 20 is distinguishable over Wilk. Claims 21-31 are dependent on claim 20 and incorporate all the features recited in claim 20. Therefore, claims 21-31 are distinguishable over Wilk for at least the same reasons that claim 20 is distinguishable. The dependent claims are distinguishable for additional reasons as well. For example, dependent claim 21 recites that the hollow shaft and the instrument are coupled together within the body. In contrast, Wilk teaches coupling one part of the instrument with another part of the instrument itself; Wilk does not teach coupling the instrument with a hollow shaft inside the body. Applicant has amended claims 21 and 27 to use terminology consistent with the amended language in claim 20.

### ***Claim Rejections - 35 U.S.C. § 103***

The Examiner concluded that claims 10-19 were unpatentable as being obvious over Wilk in view of Adams et al. Claims 10-19 are dependent on amended claim 1. Therefore, claims 10-19 incorporate a hollow shaft and a drive shaft

rotatably disposed in the hollow shaft that can be detachably coupled to a first surgical instrument.

The Examiner acknowledges that Wilk does not teach a flexible shaft having at least one drive shaft configured to effect movement of a movable element. In addition, Wilk does not teach a hollow shaft with a drive shaft rotatably disposed in the hollow shaft. Moreover, Wilk does not teach a drive shaft that can be detachably coupled to a surgical instrument. Adams et al. teaches a pair of "control wires" 22, 24, but the control wires are integrally connected to a stapler instrument 10. There is no suggestion that the control wires 22, 24 of Adams et al. are detachable from the stapler instrument, or that the control wires could be disposed in a hollow shaft that detachably couples to the stapler instrument. Therefore, the deficiency of the Wilk disclosure is not overcome by combining Wilk with Adams et al. The position of the drive shaft inside the hollow shaft of claim 1, and the detachable coupling between the drive shaft and a surgical instrument are features of claim 1 that permit the hollow shaft to operate a variety of detachable instruments. (Application, p. 5, lines 1-4; p. 8, line 25 - p. 9 line 8). This capability is neither taught nor suggested by the combined disclosures in Wilk and Adams et al. Therefore, claim 1 is patentable over the combined disclosures of Wilk and Adams et al. Dependent claims 10-19 incorporate all the features of claim 1 and therefore are patentable over the cited references for at least the same reasons that claim 1 is patentable. The dependent claims include other features that distinguish over the proposed combination of Wilks and Adams et al.

In light of the foregoing amendments and new claims, the Applicant believes that the application is in a condition for allowance. The Examiner is encouraged to contact the Applicant's undersigned attorney if the Examiner believes that issues remain regarding the allowability of this application.

Respectfully submitted,

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